GOVERNOR'S COMMISSION TO STUDY NEGOTIATIONS WITHIN PUBLIC EDUCATION AGENCIES

ANNAPOLIS, MARYLAND

MARCH 19, 1971

No final Report filed – only interim report

Interim Report
of the
GOVERNOR'S COMMISSION TO STUDY NEGOTIATIONS WITHIN PUBLIC EDUCATION AGENCIES

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LETTER OF TRANSMITTAL

March 19, 1971.

To the Honorable Marvin Mandel,
Governor of the State of Maryland:

The Governor's Commission to Study Negotiations Within Public Education Agencies herewith submits its Interim Report.

The Commission held six meetings during the period January 25 through March 15, 1971, and heard extensive testimony from professional negotiators, who expressed the views of Teacher organizations and Boards of Education. After extensive consideration of the issues raised by this testimony, the Commission concentrated its study on seven specific issues which are dealt with fully in the printed Report.

The Report includes an in-depth analysis of each of these issues with recommendations and two proposed amendments to Section 160 of Article 77 of the Annotated Code of Maryland. Appended are the minutes of the several meetings and a summary of the Commission's findings.

The Report and the proposals herein were adopted at the March 15, 1971 meeting by an eleven to four vote of the Commission members. Those voting for were: Mrs. Maurer, and Messrs. Cardin, Crosby, DeVito, Elseroad, O'Connell, Rummage, Schifter, Staten, Wheatley and Yingling. Those voting against were: Mrs. Nock and Messrs. Clark, Murnane and Williams.

As Chairman of the Governor's Commission to Study Negotiations Within Public Education Agencies, I wish to express my thanks to the negotiators and other persons who appeared before the Commission and furnished us with information and assistance. To the members of the Commission I convey my deepest appreciation for their very careful consideration which was given to the complicated problems considered by the Commission and also for their attendance which I feel has been more than outstanding.

To Joseph Shane of the Department of Personnel and Dennis Dooley of the Department of Legislative Reference, we express our appreciation for their contribution in writing the minutes of the meetings; drafting the proposed legislation and preparing the Interim Report for the Commission's consideration.

Respectfully submitted,

ROY N. STATEN, *Chairman*

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NEGOTIATIONS WITHIN PUBLIC EDUCATION AGENCIES

The Commission heard sharply conflicting testimony on five issues.

1. Scope of negotiations
2. Impasse resolution
3. Union Security provisions
4. Bargaining unit composition
5. Fiscal responsibility.

SCOPE OF NEGOTIATIONS—Representatives of school management in testimony presented to the Commission requested restrictive legislation limiting bargaining to the narrow issue of wages and fringe benefits. It was their almost unanimous contention that the words "working conditions" were too broad and that in no event should mission of agency—the function, purpose and philosophy of education—be at issue at the bargaining table. The contention was clear that school management views the ultimate decision-making function, in relation to mission of agency, as being the prerogative of management. They contended further that the Boards of Education are vested, mandated and held responsible for all decisions in the area of mission of agency. Dr. Grady Ballard said, "We must not let board decisions regarding what we shall teach in schools be sabotaged by teacher organizations seeking to make it all easier for the teacher."

Representatives of employee associations contended that all issues should be negotiable. They spoke to the point that any professional aspect of the teaching situation in which teachers have a vital interest such as curriculum, size of classroom and text books are proper matters for discussion since they are professional concerns of teachers with an inevitable influence on the wages and working conditions of teachers and on their capacity to perform and to fulfill their educational mission.

There was considerable discussion by members of the Commission who spoke to the issue of expanding or contracting the "scope of negotiations". Sentiment was expressed on both sides of the issue. One additional point was raised by several Commission members, to wit: while an issue involving redefining or expanding "scope of negotiations" may be presented at the bargaining table, school management does not have to say "yes", and further, were they to agree to anything that is "invalid" as far as abdication of their rights and responsibility as a school board is concerned, that the law would prevent their entering into any agreement in these areas.

The positions, as reflected in testimony, were so diverse that the Commission feels that at this particular moment, we do not have time to explore the issue to the extent required to reach substantive agreement. We, therefore, make no recommendation concerning the issue of "scope of negotiations" at this time.

IMPASSE RESOLUTION—"Impasse resolution" specifically and only refers to the inability of the parties negotiating a collective agreement—a new collective agreement to arrive at a mutually agreed upon contract. "Impasse resolution" does not address itself to problems arising out of interpretation of a mutually agreed upon and signed collective agreement.

At the present time, after an impasse has occurred between the parties and this impasse is affirmed by the State Superintendent of Schools, an attempt is made to resolve the impasse through each of the parties selecting a member of an impasse panel and agreeing to a third impartial member. Should the parties fail to agree on the third impartial member, the State Superintendent of Schools may designate this member.

Different views were presented to the Commission relative to the effectiveness of the current impasse resolution procedure. Mr. Robert Haugen, Director of Field Services of the Maryland State Teachers Association, stated that the experience of the Teacher Association has been that while the recommendations of the impasse resolution panel are accepted by teacher associations they are, in many or most instances, rejected in whole or in part by boards of education. In his opinion, and in the opinion of the Teacher Association, this left the Teacher Association without any recourse for effective, peaceful action. It was the opinion of the Teacher Association and of the American Federation of Teachers that, under the present circumstances, if boards of education can reject impasse panel recommendations, then the maintenance of balance at the bargaining table demands that teachers be allowed the limited right to withhold their services—the limited right to strike.

School management, in testimony presented by Dr. Ballard, Mr. Mahaffey and Mr. Middleton, was firm in asking that the law maintain its absolute prohibition against the right to strike by the public school teacher. They felt that withdrawal of services was against the law and inherently bad in that it deprived the public of services that were non-duplicable.

In view of conflicting testimony and the fact that the present law prohibits the right to strike, the Commission recommends that no action be taken on this issue at this time.

UNION SECURITY—Once again, the Commission was presented with opinions that were poles apart. Employee associations requested that the law permit the negotiation of an agency shop clause in a collective agreement. (Definition: an agency shop is a provision in a contract mutually agreed upon between the parties which states that all members of the bargaining unit do not have to belong to the organization that has exclusive, representation rights, but that each member of the bargaining unit who chooses not to belong must pay a fee—a service charge as a contribution toward the administration of the agreement. Employees who fail to comply with this requirement shall be discharged by the employer.) In support of their request for an agency shop, employee associations maintained that they are required by law to represent all of the employees in the negotiating process and that the fruits of the negotiations accrue to all members of the bargaining unit—member and non-member alike. They further pointed to the fact that they are required by law to process the grievances of all members of the bargaining unit—member and non-member alike. They contended that a spirit of equity would demand that all who receive services pay for services rendered. The employee associations buttressed their argument by stating that the agency shop has been ruled legal and valid in several states of the union.

School management unalterably opposed the authorization of negotiations for an agency shop. They asked that the law specifically preclude the possibility of negotiating for an agency shop. In support of their argument, they claimed that the agency shop would relieve the organization of accountability to their constituents; that it could be the means of

perpetuating the exclusivity of a specific employee organization by subsidizing its operations with the dollars of unwilling donors, and whose chief concern is the support for the positions of the state and national organization rather than of local organization members. In conclusion, school management referred to the Florida Supreme Court in support of their position against the agency shop. The contention was that the agency shop clause is repugnant to the Constitution.

Once again, in view of the marked differences in the posture of school board management and the teacher associations, it is the considered opinion of the Commission that the issue of agency shop remain exactly as it is at this time.

BARGAINING UNIT—The Commission heard evidence that in a major school district, only 8 to 10 school employees remain unrepresented for the purposes of collective bargaining. School management contended that when you have collective negotiations, supervisors and administrators of relatively high rank can bargain and assume a union or association posture with the school board; that in this process, management is stripped of the very personnel who should be the instruments for the presentation of school management's point of view. In essence, they claim that a conflict of interest exists when supervisors and administrators can bargain collectively.

Conversely, employee associations expressed the deep concern that an unrepresented middle management would have a great deal of difficulty in protecting its interests. Coupled with the question of self-protection, which is a critical issue in labor relations, is the fact that supervisors and administrators have organizations of their own that do bargain and represent them in negotiations with school boards of education. These organizations exist and are recognized in many counties in Maryland.

In the face of conflict in theory and the fact of existing organizations of middle school management, the Commission once again finds itself hard-pressed to resolve the issue in the short space of time during which it has been able to deliberate on this matter. We, therefore, recommend that no action be taken on the issue of "bargaining unit" at this time.

FISCAL RESPONSIBILITY—While testimony was unanimous that the question of fiscal responsibility, that is the degree of finality of any agreement reached at the bargaining table, is a problem, resolutions were not forthcoming. The issue concerns itself with the capacity of the school board to commit itself in the collective bargaining process to a financial package that the employee association will know is final and will be acceptable to the appropriating authorities. Factually fiscal finality is almost never possible at the bargaining table. The rule, rather than the exception, is that what is finally negotiated at the bargaining table between school board management and teacher association or union is cut by either the Executive or the Legislative branch of the governmental jurisdiction in which the school board finds itself.

That this uncertainty as to the finality of the package ultimately agreed upon between the parties in the collective bargaining process is a serious problem is quite clear to the Commission. Once again, time does not permit the quantity and quality of discussion necessary to allow the Commission to even attempt to resolve this most difficult and most serious problem.

The Commission, therefore, recommends that no action be taken on this issue at this time.

FINAL AND BINDING ARBITRATION—Final and binding arbitration in the area considered by the Commission refers only to grievances arising under such terms of the agreement as the parties have agreed to be arbitrable. It is the considered opinion of the Commission that before final and binding arbitration could take place, the following conditions would have to be met:

1. The parties, school board and employee association, would have to agree to a contract and affix their signatures thereto.

2. An arbitration clause would be written clearly defining the powers of the arbitrator and limiting him to interpreting the agreement and specifically in each case the grievance submitted to him.

3. That the parties to the collective agreement would, in the process of negotiations, determine those issues that are arbitrable.

4. That final and binding arbitration be permissive in that the parties negotiating the collective agreement either may or may not negotiate said clause. It is not the intent of the Commission to make final and binding arbitration mandatory upon the parties. In consideration of the above, the Commission recommends that the appended bill providing for permissive final and binding arbitration be introduced in this session of the Legislature:

The Commission arrives at this position after hearing considerable testimony. The rationale for binding arbitration of grievances as presented by teacher associations (testimony of Robert Haugen) is as follows:

> "It is a mechanism to *assure* settlement of grievances.
>
> It provides an employee with due process—a basic tradition of our democratic society.
>
> The morale of teachers and administrators can be improved by knowing that there is a just termination point should a dispute arise.
>
> Arbitration can be a real safety valve. Issues that may develop into a bitter dispute may be handled in the grievance procedure and settled.
>
> Arbitration in the grievance procedure recognizes a spirit of fair play in the interests of both employer and employee in good personnel administration and relationships. The rights and interests of both parties are respected and protected. Dispute resolution via a grievance procedure reduces the need for court actions, and relieves the administrative agency (State Board of Education) of the need for numerous hearings."

Supporting this position, Mr. A. Samuel Cook, of Venable, Baetjer and Howard, stated that he felt that the association should have the right to a neutral interpretation of a collective bargaining agreement—to final and binding arbitration—providing that there are sharp and clear restrictions on the arbitrator. He stated that in his opinion, final and binding arbitration of a mutually agreed upon contract is an inevitability.

Dr. Gordon Anderson, Assistant Superintendent for Personnel for Montgomery County, also concurred in supporting permissive final and

binding arbitration. It was his contention that final and binding arbitration is less costly than litigation in the courts; that the arbitrator is more knowledgeable in the areas to be arbitrated than a judge; that since the parties have chosen the arbitrator, they are more likely to abide by his decisions and that most importantly, it is a procedure that is peaceful and non-disruptive.

While some school board management favored final and binding arbitration, there was opposition manifested by other representatives of school management. Mr. Fred Schoenbrodt, President of the Howard County Board of Education, stated that any proposed binding arbitration amendment would erode board authority—that it would lead to a dilution of that authority through the delegation of decision-making power to an outside person who would not be accountable to the school system, the superintendents, and the citizens.

There was a general feeling expressed by school board management opposed to final binding arbitration that final and binding arbitration could force the board to arbitrate issues that they think are not arbitrable and that the concept of final and binding arbitration although initially applied to grievances arising out of an agreed upon contract might end in the school board eventually having arbitration extend to other areas of disagreement including impasse resolution.

Others who spoke against final and binding arbitration presented to the Commission the fact that there is a remedy in the present law and in practice that provides for the resolution of any conflict between a school board and an association or individual teacher. These speakers specifically referred to the State Board of Education as the court of final and last resort for the resolution of all grievances.

Without dismissing the arguments presented by those members of school management who are opposed to final and binding arbitration, the Commission feels that it heard extremely persuasive and compelling arguments for permissive final and binding arbitration from Dr. Gordon Anderson, Assistant Superintendent of Schools in Montgomery County; Mr. A. Samuel Cook, the attorney for several school boards in Maryland, and from all employee associations, emphasizing that final and binding arbitration of grievances arising out of a signed collective agreement is a means of providing a structural option to settle disputes peacefully; affords due process; limits another job action for the resolution of conflict such as strikes and stoppages: and affords an expeditious handling of grievances with resulting improved morale.

The Commission considers these arguments persuasive and we, therefore, recommend the adoption of the appended bill which provides for permissive final and binding arbitration.

TIMING IN IMPASSE RESOLUTION—It was the unanimous opinion of school board management and of employee associations that subsection I of Section 160 be amended as it deals with the procedure for having an impasse declared by the State Superintendent and that the time limits for the mediators to be appointed and to take action be more clearly drawn.

Speed in impasse resolution is vital. We, therefore, recommend that subsection (i) of Section 160 be changed as follows: (Encl. #2)

(An Act to repeal and re-enact, with amendments, Section 160(i) of Article 77.)

This bill will be introduced in this session of the Legislature.

APPENDIX

A BILL

ENTITLED

AN ACT to repeal and re-enact, with amendments, Section 160(h)(2) of Article 77 of the Annotated Code of Maryland (1969 Replacement Volume), title "Public Education," subtitle "Chapter 14½. Employee Organizations," to provide that the matters agreed upon in negotiations may include a provision for binding arbitration of grievances.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Section 160(h)(2) of Article 77 of the Annotated Code of Maryland (1969 Replacement Volume), title "Public Education," subtitle "Chapter 14½. Employee Organizations," be and the same is hereby repealed and re-enacted with amendments to read as follows:

160.

(h)(2) The term "negotiate" as used herein shall include the duty to confer in good faith, at all reasonable times, and to reduce to writing the matters agreed upon as the result of such negotiations, *and such agreements may include a provision for the binding arbitration of grievances arising under such terms of the agreement as the parties have agreed to be arbitrable.*

SEC. 2. *And be it further enacted,* That this Act shall take effect July 1, 1971.

A BILL

ENTITLED

AN ACT to repeal and re-enact, with amendments, Section 160(i) of Article 77 of the Annotated Code of Maryland (1969 Replacement Volume), title "Public Education," subtitle "Chapter 14½. Employee Organizations," to provide that in the event an impasse in negotiations occurs, the report and recommendation shall be made within thirty (30) days from the date of the determination by the State Superintendent that an impasse exists, and to permit extensions of impasse time limits established, with the consent of both parties.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Section 160(i) of Article 77 of the Annotated Code of Maryland (1969 Replacement Volume), title "Public Education," subtitle "Chapter 14½. Employee Organizations," be and the same is hereby repealed and re-enacted with amendments to read as follows:

160.

(i) Impasse in negotiations.—If upon the request of either party the State Superintendent of Schools determines from the facts that an impasse is reached in negotiations between a public school employer and an employee organization designated as an exclusive negotiating agent, the assistance and advice of the State Board of Education may be requested, with the consent of both parties. In the absence of such consent, upon the request of either party, a panel shall be named to aid in the resolution of differences. Such panel shall contain three persons, one to be appointed by each party within three (3) days, and the third to be selected by the other two within ten (10) days from the date of said [request] *determination of impasse.* The State Board of Education, or the panel selected, shall meet with the parties to aid in the resolution of differences, and, if the matter is not otherwise resolved shall make a written report and recommendation within thirty (30) days from the date of [said request] *the determination by the State Superintendent that an impasse exists.* Copies of such report shall be sent to representatives of both the public school employer and the employee organization. All costs of mediation shall be shared *equally* by the public school employer and the employee organization.

SEC. 2. *And be it further enacted,* That this Act shall take effect July 1, 1971.

MINUTES OF JANUARY 25, 1971

The Governor's Commission to Study Negotiations Within Public Education Agencies held its first meeting for purposes of organization at 2:10 p.m. on Monday, January 25, 1971. The meeting was held in the Majority Room of the Treasury Building, Annapolis, with Senator Roy N. Staten, Chairman, presiding. Others present were: Madame Maurer and Messrs. Bosz, Crosby, Elseroad, Mitchell, Murnane, Rummage, Schifter, Williams, Wheatley and Yingling.

Messrs. Cardin and DeVito advised the Commission by telephone that due to previous commitments, they would be unable to attend the first meeting but would attend future meetings.

The Chairman extended words of welcome and advised the Commission that in all probability, it would consider labor relations and negotiations of professional and non-professional employees employed by all State agencies.

A detailed discussion of the intent of Senate Joint Resolution 60 then ensued with Mr. Schifter advising that although the title of the resolution deleted the words "public education", the body of the resolution referred to "public school employees" and "42,000 professional public school employees".

Secretary of Personnel Bosz said that he hoped the Commission would consider the entire gamut of public employees.

Delegate Maurer advised that it might be impractical, if not impossible, to limit the study of the Commission to the field of education but that she agreed with Mr. Schifter's interpretation of the resolution, that the primary area of consideration should be the field of education.

A general discussion of the Commission's area of responsibility followed with Delegates Maurer, Mitchell, Rummage and Yingling contributing along with Messrs. Wheatley and Williams.

Mr. Fred Spigler of the Governor's office addressed the Commission regarding the responsibility of the Commission and offered his opinion that the major effort would most probably involve the field of education while not limiting the Commission's study to that sole area; that the Commission might, in effect, be a "watchdog" to check the substance and intent of any new legislation dealing with this topic.

After additional discussion by the members concerning the role of the Commission, Mr. Williams offered a motion to limit the Commission's area of study to the field of education. The motion was seconded by Delegate Maurer and was passed.

The members then decided that in an attempt to isolate the issues, they would like to hear from experienced negotiation people to explain and determine the problems and to also hear both sides of the question of arbitration and negotiation.

Chairman Staten suggested the presence at the next meeting of Dr. Paul Cooper, Mr. Malcolm Kitt and Mr. Joseph Shane. The Chairman advised that, in his opinion, these gentlemen could greatly assist the Commission's study because of their expertise in the fields of education, arbitration and negotiation. The Commission agreed and letters of invitation will be sent requesting their appearance at the next meeting.

The members further discussed the role of the Commission and agreed that at the first regular meeting they would review the present law (The Professional Negotiations Act) and hopefully hear from Dr. Cooper and Messrs. Kitt and Shane.

The next meeting of the Commission will be held on February 1, 1971 at 2:00 p.m. in the Majority Room in the Treasury Building at Annapolis.

The meeting was adjourned at 4:30 p.m.

MINUTES OF FEBRUARY 1, 1971

The Governor's Commission to Study Negotiations Within Public Education Agencies held its second meeting at 2:15 p.m. on Monday, February 1, 1971. The meeting was held in the Majority Room of the Treasury Building, Annapolis, with Senator Roy N. Staten, Chairman, presiding. Other members present were: Mesdames Maurer and Nock, and Messrs. Bosz, Cardin, Clark, Crosby, Elseroad, Mitchell, Murnane, O'Connell, Rummage, Schifter, Wheatley and Yingling.

The Chairman expressed his thanks to the Commission members for their attendance and extended words of welcome to guests Paul Cooper, Malcolm Kitt, Joseph Shane and Charles Willis.

Mr. Kitt, of the Attorney General's Office, addressed the Commission and discussed the problems of bargaining and negotiations under the provisions of Section 160 of Article 77 of the Annotated Code of Maryland and the probable questions that the Commission might encounter.

Mr. Schifter joined Mr. Kitt in his discussion regarding the constitutionality of binding arbitration and advised the Commission of Administrative rulings which effected this area.

Mr. Kitt further advised that arbitration is not binding on school boards as they have exclusive authority and cannot delegate this authority.

Mr. Crosby said that according to a recent Court opinion in Baltimore City, it was decided by the Court that arbitration was not a step in the grievance procedure.

Mr. Schifter then discussed a series of eleven cases dealing generally with arbitration and more specifically with the problems of impasse, final determination and job descriptions.

Mr. Wheatley posed the question of whether it was good public policy to force parties into court when an impasse is reached, or should arbitration be binding on questions arising under a validy executed contract?

Chairman Staten then asked the Commission to discuss some of the specific problems that the Commission should attempt to resolve.

Mr. Crosby advised that institutional teachers are not covered by Section 160 of Article 77 and that the law should be redefined to include such teachers.

Delegates Cardin, Mitchell, Rummage and Yingling, and Messrs. Crosby, Wheatley and Elseroad, described various and specific problems such as unit size, right to strike or not to strike, ratio of teachers to pupils, teacher's load, number of staff per 1000 students, class size with regard to type of pupils, fiscal responsibility and proliferation of units.

After some further discussion on this subject, Chairman Staten called on Joseph Shane of the Department of Personnel, to discuss the Scope of

Negotiations. Mr. Shane said it was his opinion that this was the thorniest area in bargaining and therefore, one of the most important problem areas to be resolved by this Commission. He further stated that, "What happens here will effect the State of Maryland and possibly other states."

It was Mr. Shane's further opinion that there now exists a proliferation of units including management, mid-management and teachers which in itself creates a problem. In his discussion of single unit as compared to a proliferation of units, Mr. Shane pointed out that single units oftentimes submerge the aims and interests of other employees while a proliferation of many units is almost impossible to administer. He felt that the answer to this problem lies somewhere in between.

Mr. Yingling cited an example of proliferation of units in Carroll County which created a separate bargaining group for principals and supervisors.

In response to a question from Delegate Maurer on how to deal with middle management, Mr. Shane cited the numerous problems encountered by the City of New York which he felt was brought about by a proliferation of units and again stated that the answer was not the single unit nor a proliferation of units but somewhere in between.

Mr. Shane then discussed in depth the areas of fiscal responsibility, binding arbitration after contract, and compared the Agency Shop with the Union and Closed Shop.

At the conclusion of Mr. Shane's remarks, Chairman Staten requested the Commission's thoughts regarding an agenda for future meetings.

Madame Maurer and Messrs. Rummage, Schifter, and Wheatley suggested that professional negotiators be invited to address the Commission at its next meeting and advise the members of the problems as they exist today. Messrs. Crosby, Murnane, and Schifter advanced names of experienced negotiators and Mr. Shane volunteered his services to set up an agenda for future Commission meetings.

Chairman Staten said that he would make the necessary arrangements to insure that both sides of the negotiation question would be discussed.

The next meeting of the Commission will be held on Monday, February 8, 1971 at 2:00 p.m. in the Majority Room in the Treasury Building at Annapolis.

The meeting was adjourned at 4:15 p.m.

MINUTES OF FEBRUARY 8, 1971

The Governor's Commission to Study Negotiations Within Public Education Agencies held its third meeting at 2:15 p.m. on Monday, February 8, 1971. The meeting was held in the Majority Room of the Treasury Building, Annapolis, with Senator Roy N. Staten, Chairman, presiding. Other members present were: Mesdames Maurer and Nock, and Messrs. Bosz, Cardin, Clark, Crosby, DeVito, Elseroad, Mitchell, Murnane, O'Connell, Rummage, Wheatley, Williams and Yingling.

Mr. Schifter had previously advised Chairman Staten that he would be unable to attend due to a previous commitment and was excused.

The Chairman expressed his sincere thanks to the Commission members for their excellent attendance and extended words of welcome to

guests Grady Ballard, Robert Dubel, Morris Jones, Royd Mahaffey, William Middleton, Joseph Parlett and Charles W. Willis.

The minutes of the February 1, 1971 meeting were read and Mr. Wheatley offered an amendment to line four of page 2, adding the phrase, "on questions arising under a validly executed contract?"; such amendment to follow immediately after the word "binding". The minutes were then accepted as amended and read.

Mr. Williams requested that copies of recent administrative decisions, discussed at a previous meeting, be sent to each member. The Chairman agreed and copies will be sent prior to the next regular meeting.

William Middleton, Director of Personnel, and negotiator for the Board of Education (Wicomico County), then addressed the Commission. The essential argument raised by Mr. Middleton was that the negotiation process was time consuming. The need to research and authenticate statements and positions was a diversion of time from teaching to negotiations and in his case, from personnel work to negotiations. Mr. Middleton felt that as spokesman for the Board, he represented the public, the Board and the students, whereas teacher organizations only represented themselves. He then referred to the matter of "whipsawing". Mr. Middleton felt that whenever the employee association won something from one school board, they immediately asked for it from all boards. He made the following suggestions for amendments to the law:

(a) There should be statewide representation in the negotiation process.

(b) You should add to Section (b) that Boards shall not be required to negotiate on matters of educational policy or managerial responsibility.

These are Board prerogatives. This would remove selection, program, guidance, class size, materials, structure, evaluation, etc., from the scope of negotiations. Management must reserve for itself these rights. The statement in the law, "other working conditions" is too broad. In answer to questions by Messrs. Mitchell, DeVito, Wheatley, Crosby, Bosz, and Mrs. Maurer. Mr. Middleton responded that negotiations take half of his time; that the areas of "whipsawing" are on fringe benefits; that the county would accept state involvement in negotiations but might have difficulty in accepting the package negotiated by the state; and that negotiation by region would be better than individual school board negotiations. Finally, he could not answer affirmatively as to whether the law was beneficial to all parties.

Mr. Joseph Parlett, Executive Director of the Anne Arundel County Teachers Association, was the next speaker. He opened by saying that they had just concluded their third master contract, all of which had ended in impasse hearings. He addressed himself to two basic issues. First, the scope of negotiations—what are working conditions? His opinion was that working conditions should include teaching, composition of the classroom, equipment, design of buildings and atmosphere because all of these involve professional aspects of the teaching profession.

The second point raised was the "funding cycle". Mr. Parlett stated that true negotiations are difficult to come by when fiscal responsibility is not inherent in the negotiation process. He added that time leads to a sharp dilution of the negotiated package. The association first comprises

its original demands and then the impasse resolution cuts what has been negotiated. Then, the council may cut what the impasse procedure decided. Mr. Parlett also commented that constant impasses were not fair because of their prohibitive cost.

Questions were asked by Mrs. Maurer, Messrs. Rummage, O'Connell, Williams, Cardin, Mitchell, Yingling, and Bosz, concerning the distinction between "working conditions" and "management prerogative". Mr. Parlett said, "My temptation is to say that all 'working conditions' are negotiable." He also advised that the cost of "impasse procedure" varied from a few hundred dollars in one impasse to several thousand dollars in another; the arbitrator's cost being $200.00 a day.

The scope of negotiations was further discussed when Mrs. Maurer offered the question as to how the public interest might best be protected other than through school boards. Mr. Parlett's response to issue of "curriculum needs" was that at the very least there should be input by professionals, by the teachers. Mr. Parlett also agreed that the possibilities of county or industry-wide bargaining existed.

Dr. Grady Ballard of Anne Arundel County was the third speaker. He questioned the very adversary nature of the collective bargaining procedure as being appropriate to resolve many of the items presently discussed at the negotiating table. It was his contention that the management function is the decision making process, that it is the Board's right and that it is not negotiable. He stated that there was a difference between the responsibility which was the board's right, and the concern which teachers could voice and that bargaining should not take place to reach such educational decisions. It was his further contention that unions represented union teachers and not children and therefore they could not be impartial; that educational decisions were basically those of the board and professional educators; that administrators and school superintendents should decide these issues. Dr. Ballard recommended that Section 160 be amended to delete "other working conditions" and substitute "other matters of teacher welfare"; that the law further be amended to preclude the possibility of negotiation for an agency shop; that subsection (c) have the word "assist" added so that employees have the right not to assist employee associations; and that in subsection (i), the procedure for impasses be tightened up as far as the timing requirements are concerned.

Questions were asked by Messrs. Yingling, O'Connell, Wheatley, Rummage, and DeVito. Responding, Dr. Ballard said, "There isn't any legisative body within the school system where teachers have input into matters such as textbooks, curriculum, instruction, etc." It was Dr. Ballard's opinion that the supervisor is best qualified to determine who can contribute in these areas rather than employee associations. Sharp questioning on this point elicited the fact that what was asked was not whether there was employee association involvement in educational policy matters, but whether there existed any mechanism, for example, an elected legislative teacher *plus* administrative body that could have input into the decision making process as it effects curriculum, etc. Dr. Ballard's reply was that there is not any such body. He further stated that teachers should be involved in curriculum matters, but that the administrator should choose the participant rather than the association. He agreed that exclusive recognition of a bargaining agent had resulted in "tighter management". Under no circumstances would Dr. Ballard agree to an agency shop even though the scope of negotiations was restricted.

In direct response to questions as to what would happen if a non-member sought relief on a breach of a contract and whether the negotiating agency could charge a fee for services rendered, Dr. Ballard answered, "That's the association's problem."

Dr. Ballard also discussed the question of the "unit". At present, there are only 8 or 10 people outside of the bargaining unit. He stated that he would like to see the law changed to exclude administrators and supervisors from the bargaining process.

Morris Jones, Associate Executive Director of the Maryland State Teachers Association, was the next speaker. He addressed himself primarily to the area of impasse resolution and agreed with Dr. Ballard that sub-section (i) needed changing as far as the timing requirements were concerned. He stated that the law was a good law, that it worked; and that in the first year of the law, they were able to achieve a written statement of agreement with each school district, and further, that each year the bargaining process became more sophisticated. Addressing himself further to the impasse procedure, Mr. Jones said that he did not believe in deleting the "No Strike" section of the law but that greater effort should be expended to refine the grievance-impasse resolution procedure so that it could become workable. He also suggested that sub-section (i) be changed so that findings of fact and recommendations be submitted within 30 days to all parties including the State Board of Education. Questions concerning impasse were then asked by Mrs. Maurer, and Messrs. Elseroad and O'Connell. Mr. Jones suggested that it would be very important to have an impartial agency designated to oversee the entire area of impasse resolution. This agency would be similar to a public employee relations board as they have in other states. In discussing the difference between mediation and fact finding, Mr. Jones said that mediation was more desirable since the fruits of mediation resulted in the parties agreeing between themselves rather than having the parties accept what somebody else decided for them. The need for an impartial agency arises because today the problems are of greater complexity and number than were ever anticipated when the law was written and a separate agency could best resolve these issues.

The next speaker was Royd Mahaffey, Superintendent of Schools, Wicomico County. Mr. Mahaffey was sharply critical of the law. In his opinion, it created fragmented groups with separate interests, polarization, confrontation and the possibility of the destruction of the school system. There is a dilution of the team concept with the selfish interests of the teachers dominating which is confusing to the supervisory and administrative ranks. There is an abandonment of professionalism by the teacher. The teacher, in his opinion, wants more money for less work and is exhibiting an arrogance of power. He further stated that negotiations in the public sector are not suitable.

Short of repeal of the law, he suggested:

(a) That the only responsibility be "meet and confer". This involved professionalism and not an adversary proceeding. In "meet and confer" nothing would be binding on the parties to reduce agreements to writing, and either could reject.

(b) Scope of negotiations should be limited to salaries and fringe benefits.

(c) Supervisors and administrators should be excluded from the bargaining unit.

(d) The Agency Shop should be declared illegal.

(e) If the fiscal authority says no to a concluded agreement, then the fiscal authority's decision should be accepted as final without renegotiation.

(f) That binding arbitration be prohibited; that tenure be removed if negotiations continue; and

(g) That there be severe penalties for strikes similar to that provided by the Taylor Act in New York State.

In response to questions by Mr. Wheatley, Mr. Mahaffey believed it to be inconceivable that administrators would not be responsive to the needs of employees; and therefore, supervisors, administrators, and superintendents could very probably run the school system without collective negotiations.

The last speaker was Mr. Robert Dubel, Assistant Superintendent of Schools, Baltimore County. He stated that he does not have too many problems with the law; that there was no turning back; and that the fact of the matter is that collective negotiations is a way of life in American education. Without any law, there would be chaos. As a matter of fact, there is a great possibility that without a law you would have teacher strikes for the purpose of representation or for the right to bargain. He recommended that we do not re-open the law for any changes; that we do not have enough experience with the law to properly evaluate changes. In response to questions by Messrs. Williams and Bosz, Mr. Dubel stated that the State Board cannot serve as a mediation panel because there are too many items for it to consider. For example, the last Baltimore County negotiation left unanswered 91 items. Mr. Dubel was of the further opinion that the law should be extended to include classified employees in the educational system. At the present time, he meets and confers with AFSCME and there are, in fact, three units, school secretaries, an AFSCME unit of operation and maintenance employees, and a supervisory position-foreman and technical unit. He believed that under the present circumstances, supervisors and administrators should be allowed to bargain but that you should stop at the director level.

At the conclusion of Mr. Dubel's remarks, Chairman Staten thanked all the guest speakers and again voiced his appreciation to the Commission members for their fine attendance. He advised that additional speakers would be invited to address the Commission at its next regular meeting.

The next meeting of the Commission will be held on Monday, February 22, 1971 at 2:00 p.m. in the Majority Room of the Treasury Building at Annapolis.

The meeting was adjourned at 4:45 p.m.

MINUTES OF FEBRUARY 22, 1971

The Governor's Commission to Study Negotiations Within Public Education Agencies held its fourth meeting at 2:10 p.m. on Monday, February 22nd, 1971. The meeting was held in the Majority Room of the Treasury Building in Annapolis, with Senator Roy N. Staten, Chairman, presiding. Other members present were Mrs. Maurer, and Messrs. Bosz, Cardin, Clark, Crosby, DeVito, Mitchell, Murnane, O'Connell, Rummage, Schifter, Wheatley and Yingling.

Dr. Elseroad had previously advised Chairman Staten by letter that he would be unable to attend due to a previous commitment. Mr. Robert Bates, who had been invited to speak before the Commission, advised by phone that he would be unable to attend the meeting as he was detained in New Jersey.

The Chairman expressed his thanks to the Commission members for their attendance and extended words of welcome to the guest speakers, Gordon Anderson, Charles Collins, A. Samuel Cook, Robert Haugen, Walter Levin, and Fred Schoenbrodt.

The Minutes of the February 8th, 1971, meeting were read and Joseph Shane offered an amendment to the last paragraph on page 3, substituting the name of Mrs. Maurer for Dr. O'Connell. He offered a second amendment to the first line on page 6, adding the phrase "impasse resolution" to follow immediately after the word "grievance". The Minutes were then approved as amended and read.

Robert Haugen, Director of Field Services, Maryland State Teachers Association, then addressed the Commission. He directed his remarks to the need to minimize confrontation and maximize the opportunities for peaceful cooperative efforts by teachers and school administrators. He stressed: (1) That the concept of "exclusivity" must embody both rights and responsibilities. He pointed out that the organization designated as the exclusive teacher bargaining representative has the responsibility of representing all members of the bargaining unit regardless of their membership, and that the organization bears all the expense in gaining and administering a contract applicable to all teachers, member or non-member, alike. In turn, for the responsibilities inherent in the above. Mr. Haugen asked for organizational security provisions and an impartial means of unit recognition and composition. (2) There can be no meaningful negotiations if either party can, with impunity, dictate the terms of a settlement. He maintained that there is no balance, there isn't any equity at the bargaining table between employee organizations (teachers) and school boards. He pointed to the fact that the experience of teacher associations has been that while the recommendations of an impasse resolution panel are accepted by teachers, they are, in many or most instances, rejected by boards of education. This leaves the teacher association without recourse to effective peaceful action. The problem of balancing the power at the bargaining table, while protecting the public interest at the same time is fundamental; and workable alternatives must be found if the process (collective bargaining) is to be successful. (3) Negotiation is an exercise in futility if either party is free to interpret a mutally agreed upon contract unilaterally. Mr. Haugen contended, "If the Board is free to ignore that which it has negotiated, then obviously there was little point in negotiations in the first place." He stated that parties who enter into agreements in good faith do not fear third party review of allegations that they have not fulfilled their commitments. Mr. Haugen emphasized that final and binding arbitration of grievances does not involve a determination of the terms of new contracts; can only occur after the parties have made a contract and after the fiscal authorities have established a fiscal budget; and that the arbitrator can only *interpret* the parties' agreement and cannot change their agreement. Arbitration could only be involved if school management contravened commitments in its contract with teacher organizations. Mr. Haugen criticized advisory arbitration (a non-binding recommendation) as being an exercise in futility since it does not resolve the dispute but merely prolongs it. He supported his contention by pointing to the fact that there have been only

two advisory opinions rendered in Maryland in favor of the association's position and that both of these advisory arbitrations were rejected by the boards of education. The net result of these actions (rejection by the boards of education) was to produce unnecessary bitterness and distrust. He pointed to the fact that binding arbitration clauses do exist in several counties and in Baltimore City.

Mr. Haugen concluded his remarks by quoting nationally known arbitrators and mediators such as Mr. Jack Soloff, Jacob Seidenberg, George Fowler, and Judge Nathan Cayton who, with experience in Maryland educational situations, favor binding arbitration of grievances arising between parties to a collective agreement. He further stated the support of this position by the States of Massachusetts and Michigan.

In conclusion, Mr. Haugen said "the rationale for binding arbitration of grievances is as follows: It is a mechanism to *assure* settlement of grievances.

> It provides an employee with due process—a basic tradition of our democratic society.
>
> The morale of teachers and administrators can be improved by knowing that there is a just termination point should a dispute arise.
>
> Arbitration can be a real safety valve. Issues that may develop into a bitter dispute may be handled in the grievance procedure and settled.
>
> Arbitration in the grievance procedure recognizes a spirit of fair play in the interests of both employer and employee in good personal administration and relationships. The rights and interests of both parties are respected and protected.
>
> Dispute resolution via a grievance procedure reduces the need for court actions, and relieves the administrative agency (State Board of Education) of the need for numerous hearings."

In answer to questions by Messrs. Rummage, Wheatley, Yingling, Shifter, O'Connell and Staten, Mr. Haugen said he favors mandatory binding arbitration of grievances; clearly defined the differences between grievances of the terms of negotiated contracts and impasse resolution which effects terms of a newly negotiated collective agreement. He answered affirmatively, when pressed, that teachers need equity and unless a viable alternative is found should have the right to withhold their services—should have the right to strike. He buttresses his argument for the limited right to strike by referring to the Hawaii and Pennsylvania laws where the right to strike was granted under prescribed conditions. He affirmed that his position on the limited right to strike was the official position of the Maryland State Teachers Association.

In a direct response to a question by Mr. Shifter as to the arbitrability of issues in negotiations, Mr. Haugen said that the Pennsylvania statute allows the parties to voluntarily agree to binding arbitration of issues *in negotiations* but that even this binding arbitration is subject to fiscal responsibility.

Dr. O'Connell questioned whether Mr. Haugen sought final and binding arbitration because he believed that there was an imperfection in the law based on principle or whether he sought the change because lack of final

and binding arbitration had caused trouble in Maryland. Mr. Haugen said final and binding arbitration was defensible on its merits, eliminated morale problems and that its absence had created mischief and a substantial number of problems. In direct response to Chairman Staten's questions, relative to specific amendments to the existing law, Mr. Haugen responded: (1) You need unit clarification; (2) Final and binding arbitration of grievances arising out of the terms of a collective agreement should be permitted; and (3) that the law should not deal with the matter of scope of negotiation.

Mr. Schifter stated that the State Board of Education was in the process of establishing a position "Hearing Examiner." He asked, "Would you not get binding arbitration by appeal to the State Board of Education?" Mr. Haugen responded by saying he assumed that if the State Board of Education rendered a decision, it would be final and binding but that he would still prefer a neutral.

The next speaker to address the Commission was Mr. Fred Schoenbrodt, President of the Howard County Board of Education. He stated that any proposed binding arbitration amendment would erode board authority with a subsequent dilution of that authority to an outside person for decision-making. This outside person would have no accountability to the school system, the students, the citizens and the taxpayers of Howard County. He emphasized that law and custom give the school board the right to manage. A final and binding arbitration clause could force the board to arbitrate issues that they think are not arbitrable. It was his opinion that if final and binding arbitration were to exist that it would be detrimental to the collective bargaining process in that good faith bargaining would go out the window because each side would be unwilling to set forth its final position.

He also felt that even though in the beginning final and binding arbitration might be limited to the terms of an agreed upon contract that the courts would eventually extend it to all oher areas of disagreement. He concluded by stating that if final and binding arbitration is accepted and recommended by the committee that the Teacher Tenure Law should be repealed as being unnecessary; that laws are needed to protect the board from unreasonable teacher demands and he commented on Mr. Shifter's prior remarks concerning the State Board of Education by calling the Commission's attention to the fact that their newly negotiated grievance procedure calls for the submission of grievances to the State Board of Education for a final and binding decision. In response to questions by Mr. Wheatley, Mr. Schoenbrodt said that he believed that the State Board of Education's decision is final and binding. He thought that most boards of education shared his point of view and would not respond for other boards to the issue of allowing boards of education to voluntarily enter into a final and binding arbitration agreement with a teacher association if they chose to do so.

The next speaker to address the Commission was Mr. Charles R. Collins, Chief Negotiator of the Prince George's County Teachers Association, (affiliated with the Maryland State Teachers Association). He stated that he had just concluded a fourth year of negotiations—three years under the law and one year prior to the law's coming into existence. He questioned the advisability of the State Board of Education acting as a mediator in disputes between teacher associations and school boards because the "true feeling of the teacher" is that they are suspicious as to the impartiality of the state board of education. He believed that third party arbitration,

where the arbitrator is chosen either through consent of the parties or through the American Arbitration Association is the best remedy for the settlement of disputes arising out of grievances to a negotiated collective agreement.

Addressing himself to impasse resolution, he stated that a legal opinion was handed down stating that after an impasse resolution decision has been made, there is no legal way for the parties to enter into renegotiations of issues where both parties disagree with the arbitrator's decision. This actually happened. There were four items in an arbitrator's decision to which both the school board and the teacher association disagreed. Based on the above-mentioned ruling, concerning renegotiation under such circumstances, prohibition of renegotiations the only recourse left to the parties was to attempt to reach agreement on the four outstanding points and sign a *separate* agreement on these four outstanding issues. In answers to questions by Mr. Rummage, Mr. Collins said that he was not speaking for the Maryland Teachers Association; that the selection of an impartial arbitrator is extremely important and he reaffirmed his opposition to a Hearing Examiner by the State Board of Education based on questioning their capacity to be impartial; he emphasized that you need a binding time schedule because of the pressures of time limits in negotiations and that the right to collective negotiations should extend to classified employees in the school system.

Before the next speaker appeared before the committee, Mr. Richard Schifter asked and was granted permission to discuss what the present law provided for under Article 77, Section 6. Mr. Schifter said that disputes by the union or the association can be taken to the State Board of Education. Negotiated issues—under contract disputes—any issue can be taken to the State Board for final determination and in his opinion the school board is precluded from taking the State Board of Education's decision to the courts. This prohibition against the school board taking the State Board of Education's decision to the courts does not apply to employee associations. Mr. Schifter also discussed the role that the State Board of Education could play in arbitrating issues discussed between the parties *in the process of negotiations.* He stated that legally the State Board may have the power to intervene or to decide outstanding issues but that practically they would not use it. In discussing the Hearing Examiner, Mr. Schifter said that his role would be to listen to the cases and make recommendations to the board. In response to questions by Messrs. Wheatley and Crosby, Mr. Schifter was quick to point out that he did not consider the State Board of Education to be the exclusive remedy for resolving problems arising between boards of education and teacher associations. He said this is what is. . .not what ought to be. Mr. Schifter was also clear in stating that the State Board of Education has little or no authority over Baltimore City and certainly has no jurisdiction over any appropriating authority.

The next speaker was A. Samuel Cook of Venable, Baetjer and Howard. Mr. Cook stated that although he repressnts a number of school boards, he is not appearing on behalf of any of his clients. In his opinion, we were entering a period of a second labor relations revolution. Today, laborers through Ph.D.'s, feel the problem of public sector collective bargaining. Mr. Cook felt that labor problems in the public sector were here to stay and that it was inevitable that a sophisticated law covering all public employees be eventually introduced in the state. He expressed the belief that in times of stress and change where a previous relationship such as that between an employee association and school board management

(superintendents and boards of education) assumes a different nature that it is naturally unsettling to school management. Addressing himself to the question of final and binding arbitration of grievances, Mr. Cook felt that under the present law, final and binding arbitration is illegal; that the association should have the right to a neutral interpretation, to final and binding arbitration provided there are sharp and clear restrictions on the arbitrator; that his role (the arbitrator's) be limited only to interpretations of the exact language of the agreement and that he cannot exceed the authority granted to him in the contract.

Commenting on other sections of the law, Mr. Cook said that longer contracts were needed—preferably two or three years; that there should not be any unit for supervisors and administrators since, in his opinion, they were both under management and responsible in directing other employees, and he quoted extensively from the Pennsylvania law as it referred to impasse resolution and the right to strike. He openly stated that you need a fairer bargaining atmosphere, that you need alternatives to the present impasse procedures because, and quite frankly, in his opinion, if almost all negotiations ended up in mediation, why should anybody come to a final position in the actual bargaining process? In answer to questions by Messrs. Devito, Yingling, O'Connell, Murnane, Wheatley, Schifter and Mrs. Maurer, Mr. Cook responded that a constitutional change is not needed in order to have binding arbitration; that under the present law, what is called an outside arbitrator is really a mediator, since he can actually only advise, that his reason for wanting to restrict the role of an arbitrator is to prevent the arbitrator's wandering off in many different directions and Mr. Cook expressed concern that contracts concerning the use of an impartial arbitrator be properly drawn. He could offer no opinion as to the legal position taken in Prince George's County concerning renegotiations if both parties disagreed to the decision of an arbitrator, but suggested that the impasse section pattern itself after the Pennsylvania law that calls for mediation and then fact-finding and finally, if necessary, an arbitrator's decision. Again in response to Mrs. Maurer's question, he stated that you need a bigger block of time if you are going to involve yourself in mediation, fact-finding and an arbitrator's decision and that you have to back up the negotiations process but that, in his opinion, parties, if they are truly desirous of concluding negotiations, will get to the moment of truth. Addressing himself to the matter of "Scope of Negotiations," Mr. Cook said that the state should pattern itself after the Kennedy and Nixon Executive Orders and stay out of managerial areas as far as negotiations are concerned; that curriculum, for example, is not a bargainable issue. Dr. O'Connell and Mrs. Maurer both raised questions concerning long-term contracts. Mr. Cook explained that the present law *allows* for long-term contracts but that the issue is a practical one rather than a legal one. Fiscal commitments are difficult if not impossible to make beyond the present fiscal year. What has been done is that you settle all other issues for 2 or 3 years and allow the contract to be opened yearly on fiscal items. Mr. Cook concluded by saying that the present law precludes binding arbitration but that he feels that final and binding arbitration under contract clauses agreed upon between the parties is inevitable.

The next speaker was Walter Levin, General Council of the Maryland State Teachers Association. Mr. Levin stated that in his opinion final and binding arbitration is legal under the present law, that he had, in fact, petitioned this issue to the Circuit Court for Montgomery County but that he felt that the issue would not be heard during the present term of the Circuit Court. In the interim, he asked the Commission to grant relief on the

issue of final and binding arbitration by amending the law to clearly state its legality. He sharply demarcated the line between the concept of a grievance procedure calling for final and binding arbitration of disputes arising out of an already mutually agreed upon negotiated agreement from impasse resolution which is the settlement of disputes that arise in the process of negotiating a new collective agreement. He stated that final and binding arbitration of disputes over matters of interpretation of a mutually agreed upon contract sets the tone for a peaceful resolution of grievances and is a preventive against job action—strikes, stoppages, etc. In conclusion, Mr. Levin felt that there was a vital need for the Commission to act in this matter. Final and binding arbitration would provide the framework for equity to both parties in the resolution of grievances arising out of a mutually agreed upon contract.

The last speaker was Dr. Gordon Anderson, Assistant Superintendent of Personnel and Chief Negotiator for the Montgomery County Board of Education. Dr. Anderson stated that the Montgomery County Board of Education had voluntarily entered into an agreement providing for final and binding arbitration of grievances arising out of a negotiated agreement and that it had deleted this section as a result of a court decision which stated that the board extended its authority by entering into such agreement. Dr. Anderson pointed to the fact that in the private sector, 91% of all agreements have final and binding arbitration; that the arbitration clause should be voluntarily negotiated between the parties in a collective agreement and should not be mandated by legislation; that the parties must also agree as to what is arbitrable and that final and binding arbitration can only take place when the parties to an agreement disagree over the meaning of what they negotiated. Dr. Anderson would bind the arbitrator and limit him to answers specific to the grievance or issue submitted, and stated that he would clearly prohibit the arbitrator from exercising his authority beyond the issues presented.

He also reinforced the position previously taken by Mr. Levin—that if we do not have final and binding arbitration, we direct the employees to take job action to resolve their grievances. It was his opinion that arbitration is a procedure that is peaceful and non-disruptive. He compared arbitration to court action by stating that grievances can be resolved by litigation in the courts but that they are lengthy procedures and costly, whereas arbitration is quick, relatively inexpensive and affords the arbitrator the opportunity for admitting into evidence what courts may not allow; that it is less emotional and that the person selected by both parties in all probabilities is more knowledgable in the area to be arbitrated than a judge. He further stated that since both parties have selected the arbitrator, it is implicit that they agree to accept his decision. In Montgomery County, their experience with final and binding arbitration has been that three cases went to arbitration. In two of the decisions the board was sustained by the arbitrator and the third case was moot. He concluded by strongly recommending that final and binding arbitration of grievances resulting out of a negotiated agreement between the parties be made legal but optional; optional in the sense that the negotiation of a final and binding arbitration clause be left to the parties in the collective bargaining procedure to either agree upon or disagree upon. Legislation should not mandate that final and binding arbitration be negotiated but should allow the parties to negotiate this clause if they so desire.

At the conclusion of Dr. Anderson's remarks, Chairman Staten thanked the guest speakers for their presentations and advised the Commission

that the next meeting would be confined to a business session of the Commission members.

The next meeting of the Commission was scheduled to be held on Monday, March 8th, 1971 at 2:00 p.m. in the Majority Room of the Treasury Building in Annapolis.

The meeting was adjourned at 4:20 p.m.

MINUTES OF MARCH 8, 1971

The Governor's Commission to Study Negotiations Within Public Education Agencies held its fifth meeting at 2:15 p.m. on Monday, March 8th, 1971. The meeting was held in the Majority Room of the Treasury Building in Annapolis, with Senator Roy N. Staten, Chairman, presiding. Other members present were Mesdames Maurer and Nock, and Messrs. Bosz, Cardin, Clark, Crosby, DeVito, Elseroad, Mitchell, Murnane, O'Connell, Rummage, Schifter, Wheatley, Williams, and Yingling.

Mr. Robert Bates, who had been invited to speak before the Commission on a previous occasion but who was unable to, advised the Commission by telephone that he had forwarded printed copies of his proposed speech and requested that copies be distributed to the Commission members. The Chairman expressed his thanks to the Commission members for their 100% attendance and the Minutes of the February 22nd, 1971 meeting were read. Dr. O'Connell offered an amendment to the fourth line of the third paragraph on page 4, striking out the phrase "for the Maryland State Teachers Association" and inserting in lieu thereof the phrase "in Maryland." The Minutes were then approved as amended and read.

Chairman Staten opened the discussion with the following statement: "After listening to the witnesses and the discussion of commission members, it is my opinion that there is a sharp disagreement in the following areas:

1) Scope of negotiation.

2) Impasse Resolution.

3) Union security provisions.

4) Bargaining unit composition.

5) Fiscal responsibility.

I would recommend that in view of our disagreement, that a report indicate that we contemplate no action in the above-mentioned areas at this time."

However, there are two other areas and I will designate them as Number 6 and Number 7, in which there is some consensus. Number 6—final and binding arbitration of grievances arising out of differences of interpretation between the parties to a signed agreement. Number 7—the timing of impasse resolution.

Mr. Bosz agreed with the Chairman and suggested that we introduce legislation in the two areas of agreement. Mr. Wheatley supported Mr. Bosz and suggested that we have an interim report which not only indicated broad consensus and legislation in the two areas of agreement but emphasized that he would like to have the legislation introduced this year in this session of the legislature instead of waiting. Mr. Murnane questioned whether there was consensus on the issue of final and binding

arbitration. He indicated that, in fact, what was being introduced might be in opposition to the intent of the law which provided that the State Board of Education be the final authority to interpret what was agreed upon between the parties. Mr. Kitt, speaking for the Attorney General's Office, indicated that binding arbitration was not unconstitutional. Mr. Wheatley, in support of his position to act now, said that negotiations should produce something that the parties could live up to. He could see no objections to allowing the parties to voluntarily enter into a binding arbitration provision. He emphasized that he did not want final and binding arbitration mandated by law but that it should be permissive. Mr. Crosby indicated that if final and binding arbitration were passed, it would settle many unresolved issues between the parties. Dr. Elseroad spoke on the issue of binding arbitration out of the experience in Montgomery County. He said that it had worked well but that he had some concern with the breadth of the arbitration clause. He seemed convinced that Judge Shook's opinion, in which reference was made to the fact that arbitration could not take place on policy issues such as organization of the school and in the selection of materials but that it must have a narrow and precise definition of scope of negotiations in order to be legal, had a great deal of merit. Messrs. Wheatley, DeVito, Rummage and Schifter spoke on the issue raised by Dr. Elseroad. They said that the Board should not give away in the negotiation process what it doesn't want to; that scope of negotiations is really a problem that is taken up at the bargaining table. Further, if binding arbitration is permissive in that it is voluntarily entered into between the parties, then the scope of arbitration itself is a negotiable matter which could be handled at the bargaining table. In essence, it would handle itself. It was further pointed out that if the Board made a mistake that negated the intent of the law, that whether they agreed to arbitrate or disagreed, the invalidity would stand so that the question of arbitration of grievances arising out of a signed contract could only apply to a valid argument that is within a legitimate scope of negotiations. Mr. Wheatley moved that we follow the Commission Chairman's original suggestion and do not come up with a report on issues 1 to 5, stating that there is no agreement, no consensus on these issues, but that on the other two issues, final and binding arbitration and the timing of impasse resolution, that we should come up with legislation and report to this session of the Legislature. Mr. DeVito said that he heard two messages. One, that the work on the five issues over which we do not have consensus would be discussed by this group at a later date, and that he also heard the possibility of these matters (the issues over which there was no consensus) be given to another group for their consideration. Senator Staten responded by saying that either was possible. Mrs. Maurer asked that the question be divided. She indicated that it was easy to agree to disagree and that, therefore, it would be relatively simple for the commission to vote on Items 1 to 5. It was her opinion, however, that the question of final and binding arbitration needs more discussion. She indicated that she would like more clarification on the permissive nature of binding arbitration and how tightly would the law be worded as far as the arbitrability of issues are concerned. Mr. Yingling commented several times that he could not make an intelligent decision on the issue of final and binding arbitration or on any of the issues without an interim report that he could read and "sink his teeth into." He also said that there was much testimony presented to the Commission and that it warranted an interim report that could be reviewed. Mr. Murnane questioned whether there really was consensus on the issue of final and binding arbitration. Senator Staten said that's what he wanted to find out. He wanted to find out the direction of the Commission's thinking. He asked if we could take

up Mr. Wheatley's motion and Delegate Maurer's suggestion that we vote as to whether we disagree on Items 1 to 5. Mr. Schifter asked, "Why do we need an interim report—why not tackle the bills themselves?" Senator Staten indicated that he supported Delegate Yingling's position that we need a report to define why and how we arrived at the bills themselves and that he was willing to discuss the bills at this meeting for tentative approval as to the form of the bills. The Maurer amendment to the Wheatley motion—that we do not have any consensus and agreement on Items 1 to 5—scope of negotiation, impasse resolution, union security, bargaining unit and fiscal responsibility was passed and this Commission will not recommend changes in the law on these issues.

A draft of bills on final and binding arbitration and on the timing of impasse resolution was presented to the Commission for their consideration. Discussion took place concerning the use of the words "grievance" and "dispute." Messrs. Williams, Rummage, Schifter, Wheatley, Kitt and Drs. O'Connell and Elseroad discussed the substance and language of the submitted bill. It was finally agreed that *grievance* would be the preferable word for several reasons. First, that there was a careful attempt made to differentiate between impasse resolution and grievance procedure; and second, it was the opinion of the Attorney General that the word *grievance* was preferable. Substantively, it was affirmed that the only thing that can be taken to arbitration is interpretation of words of the text of an agreement. If the issue is broader than the text of the agreement, the issue is not arbitrable. Mr. Williams had a problem with final and binding arbitration based on bargaining unit. He contended that if the clause only applied to classroom teachers, he wouldn't have any objection, but if it applied to others whom he considered would be in the administrative hierarchy, he would be constrained to vote "no." It was pointed out by several of the participants in the discussion that what is arbitrable in an agreement would be or could be defined at the bargaining table *before* the agreement is signed by the parties. After much discussion, the bill submitted for consideration was amended by Mr. Schifter and Mrs. Maurer as follows: *"And such agreements may include a provision for the binding arbitration of grievances arising under such terms of the agreement as the parties have agreed to be arbitrable."* A vote was taken and the bill with its amendment carried with several "nays."

Senator Staten asked the Attorney General to be responsive to two issues concerning this bill at our next meeting. First, to give his opinion as to the definition of the words "dispute" and "grievance"; and second, to please have an opinion on the entire bill.

Senator Staten then presented to the Commission, Bill No. 2, relative to the timing of impasse resolutions. Dr. Elseroad considered the amendment "very good" but opposed the section that would allow for time limits to be extended with the consent of both parties to the impasse. He preferred tighter limits and as a matter of fact, said that the issue of extension could introduce another debatable issue into the negotiations. You need the knowledge of time limits in order to work effectively.

Senator Staten and Messrs. Yingling and Murnane spoke on the issue raised by Dr. Elseroad, concurring with it and essentially stating that without an extension, it will make people get in there and get the thing settled. The original suggestion of Dr. Elseroad was made into a motion by Mr. Murnane that the section *any time limits established in this section may be extended with the consent of both parties to the impasse* be deleted.

This was unanimously carried. Mr. Bosz suggested that in the last sentence, the word "equally" be added so that the cost of mediation would be shared equally by the public school employer and the employee organization.

There was considerable discussion as to whether or not this was the normal procedure. While there are variations which were referred to by Mr. Wheatley, in some of which the arbitrator may assess and others in which the school board or employer pays all, it was agreed that *equally* was the general rule and Mr. Bosz's amendment was carried. Mr. Bosz further suggested that the sections in the bill pertaining to "days" be sharpened by adding the word *working* in front of days. After considerable discussion, the motion died.

Chairman Staten then advised the Commission that an interim report would be submitted to the members for their consideration and he suggested that the Commission consider the proposed and revised amendments to Section 160(i) and 160(h)(2) of Article 77 at the next meeting.

The members agreed with the suggestion and after some consideration, it was decided that the next meeting of the Commission would be held on Monday, March 15th, 1971, at 4:30 p.m. in the Majority Room of the Treasury Building in Annapolis.

Chairman Staten also advised that dinner arrangements would be made for the Commission members and staff to follow immediately after the Commission meeting.

The meeting was adjourned at 4:20 p.m.